Held, that the writ be refused. *U. S. ex rel. Alaska Smokeless Coal Co.* v. *Lane, Sec. of the Interior*. U. S. Sup. Ct., October Term, 1919, No. 36.

For a discussion of this case, see NOTES, p. 462, *supra*.

SALES — AFTER-ACQUIRED PROPERTY — FUTURE CROPS — RETENTION OF POSSESSION BY VENDOR. — The defendant sold the plaintiff all the beans to be planted and raised that year on the defendant's land. It was expressly stated that title was to pass at once. After the beans were harvested, the defendant mortgaged the crop and transferred possession to the mortgagee. The buyer sued the seller and the mortgagee for the beans. *Held*, that title had passed to the plaintiff subject to the mortgagee's lien. *Hamilton* v. *Klinke*, 183 Pac. 675 (Cal.).

The court's decision was based upon the doctrine of potential possession. "In certain cases a seller may transfer title to goods which he does not then own," on the theory that he is already potential owner. *Grantham* v. *Hawley*, Hob. 132; *Briggs* v. *United States*, 143 U. S. 346. See WILLISTON ON SALES, §§ 133–137. In practice this doctrine has been limited to crops and the young of animals. By the application of this doctrine, when such property comes into existence title passes to the buyer free from any defects arising since the bargain. *Grantham* v. *Hawley*, *supra*. Because of its great hardship upon innocent third parties, arbitrary limitations of the doctrine have been laid down in several states. *Shaw* v. *Gilmore*, 81 Me. 396, 17 Atl. 314. See 1913 MINN. GEN. STAT., § 6980. In England and in some states, except as applied to mortgages, it has been abolished. See SALE OF GOODS ACT, 56 & 57 VICT., c. 71, § 5 (3). See also UNIFORM SALES ACT, § 5 (3). In those states where the doctrine is still upheld, through the intervention of another rule, a prior purchaser's title is defeated by a sale and delivery by the seller to a subsequent purchaser. See WILLISTON'S CASES ON SALES, 3 ed., 384, note. See also Samuel Williston, "Transfers of After-Acquired Personal Property," 19 HARV. L. REV. 569, 570. The principal case illustrates this safeguard against the hardships of the doctrine.

SALES — RISK OF LOSS — TIME OF PASSING OF TITLE — C. I. F. CONTRACTS. — The seller in Halifax contracted to sell to the buyer in Philadelphia goods c. i. f. Philadelphia. The quoted price included the cost, insurance, and freight. The goods were destroyed in transit by a submarine. *Held*, that the loss falls on the buyer. *Smith Co.* v. *Marano*, 76 Leg. Int. 768.

Unless a contrary intention appears, if the contract requires the seller to deliver at a distance, or to pay the freight, the property does not pass until the goods have been delivered to the buyer. See UNIFORM SALES ACT, § 19, subd. 5. But a c. i. f. contract does not come within this section. See WILLISTON ON SALES, 408. While it might well be considered the same as a contract f. o. b. destination, it is treated more like a sale f. o. b. point of origin. See *Mee* v. *McNider*, 109 N. Y. 500, 503. This doctrine must rest on the theory that the obligation of a c. i. f. contract is met by the delivery to the buyer of the bill of lading, invoice, and policy of insurance. *Horst Co.* v. *Biddell Bros.*, [1911] 1 K. B. 214, aff'd [1912] A. C. 18. See *Karburg & Co.* v. *Blythe, Green, Jourdain & Co.*, [1915] 2 K. B. 379, 388. It is not clear from the cases whether the property in the goods passes at the time of the delivery of the goods to the carrier or at the time of the delivery of the documents to the buyer. See *Mee* v. *McNider*, *supra; Karburg & Co.* v. *Blythe & Co.*, [1916] 1 K. B. 495, 514; *Groom* v. *Barbour*, [1915] 1 K. B. 316, 324. But it is unnecessary to decide this point, because it is clear that the risk throughout is on the buyer. *Manbre Saccharine Co.* v. *Corn Products Co.*, [1919] 1 K. B. 198. Therefore, if the seller has followed his authority as to the insurance, and the goods are destroyed in transit by the public enemy, the seller is not thereby precluded from making a valid tender of